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Supreme Court of the United States

OCTOBER TERM, 1935.

No. [redacted] 9

P. J. CARLIN CONSTRUCTION CO. and THE TRAVELERS INSURANCE COMPANY,

Appellants,

against

EDWARD HEANEY and STATE INDUSTRIAL BOARD OF THE STATE OF NEW YORK,

Appellees.

APPELLANTS' BRIEF AS TO JURISDICTION.

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SUBJECT INDEX.

	PAGE
The subject matter of this litigation is not of mere local concern	2
A substantial Federal question is presented	3

Alphabetical List of Cases.

Baizley Iron Works v. Span, 281 U. S. 222	6
Butler v. S. S. Co., 130 U. S. 527	7
Chelentis v. Luckenbach S. S. Co., 247 U. S. 372	7
Employers' Liab. Ass. Corp. v. Cook, 281 U. S. 233	6
Gonsalves v. Morse Dry Dock & Repair Co., 266 U. S. 171	6
Great Lakes Dredge & Dock Co. v. Kierejewski, 261 U. S. 479	6
Kenward v. The Admiral Peoples, 295 U. S. 649	6
Knickerbocker Ice Co. v. Stewart, 253 U. S. 149	6
Leary v. U. S., 81 U. S. 607, 610	7
Messel v. Foundation Co., 274 U. S. 427	7
Minnie v. Port Huron Terminal Co., 295 U. S. 647	6
Nogueira v. R. R. Co., 281 U. S. 128	7
Northern Coal & Dock Co. v. Strand, 278 U. S. 142	6
Reed v. U. S., 78 U. S. 591	7
Robins Dry Dock & Repair Co. v. Dahl, 266 U. S. 449	7
Southern P. Co. v. Jensen, 244 U. S. 205	6
Spencer Kellogg & Sons, Inc., v. Hicks, 285 U. S. 502	6
State Industrial Com. v. Nordenholt Corp., 259 U. S. 263	7
The Spokane, 294 Fed. Rep. 242 (cert. denied, 264 U. S. 583)	7

The opinions delivered in the court below are officially reported as *Matter of Heaney* v. *Carlin Construction Co., et al.*, in 269 N. Y. 93.

Supreme Court of the United States

OCTOBER TERM, 1935.

No. 817.

P. J. CARLIN CONSTRUCTION CO. and THE TRAVELERS INSURANCE COMPANY,

Appellants,

against

EDWARD HEANEY and STATE INDUSTRIAL BOARD OF THE STATE OF NEW YORK,

Appellees.

APPELLANTS' BRIEF AS TO JURISDICTION.

While neither of the appellees has made a formal motion either to dismiss or affirm, the appellee State Industrial Board of the State of New York has served and filed a statement opposing jurisdiction, in which the points are made that the matter sought to be reviewed is one of local concern, that no substantial Federal question is presented, and further that the validity of the state statute here involved, as applied in this case, is established by principles expressed by this court in cases therein enumerated; and asking that this court "refuse to assume jurisdiction to review the judgment and decree appealed from".

This brief, interposed by the appellants with the purpose of indicating briefly to the court that the case is not one that should be disposed of, without argument and adequate brief, upon the respective statements of the appellants and

the appellee State Industrial Board, will be confined to a summary discussion of the said appellee's suggestions above indicated.

1. As to appellee's contention that "the matter sought to be reviewed is one of local concern": In no case cited and in no case with which counsel for the appellants are familiar has this court so held, where, as here, the claimant was injured in the course of transportation as a passenger upon a vessel.

As pointed out in the appellants' statement as to jurisdiction, the appellee Heaney's injuries were the direct result of the destruction and sinking of the vessel in the course of a voyage in which he was being transported across the East River. Transportation by water is the principal subject of admiralty and maritime jurisdiction. The injuries which are the subject matter of this case arose directly out of such transportation.

The learned court below was closely divided, four of the judges voting for affirmance, while three dissented. Two opinions were written, one representing the views of the majority, the other those of the three dissenting members of the court. These opinions, which have been made a part of the record filed herein, are officially reported in 269 N. Y. 93.

In *Spencer Kellogg & Sons, Inc.*, v. *Hicks*, 285 U. S. 502, this court held that the workmen's compensation law of New Jersey was inapplicable and that the case was controlled by the principles of the maritime law. In the case at bar, three of the members of the court below considered that decision controlling, Chief Judge Crane saying for the minority that it was similar in facts and in his judgment exactly the same in principle.

In that case, as here, employees on their way from their homes to their place of work were being transported by vessel over navigable waters of the United States, the injury directly resulting from the sinking of the vessel in the course

of the voyage. The principal difference in the facts between that case and the present one is that there the employer owned and operated the vessel and was guilty of actionable wrong or neglect whereby liability was imposed upon it under the principles of the maritime law; whereas here the vessel was not owned or operated by the employer, the latter having merely arranged with the owner and operator of the vessel to institute and maintain a ferry service, which was primarily for the purpose of making available to the workmen wishing to engage in the construction work on Rikers Island a means of securing transportation to the island from their homes on the mainland. By the terms of this arrangement the employer assured to the carrier that his receipts from fares from the passengers transported would equal a certain minimum sum per day, agreeing that if such fares were less than the stipulated sum, the employer would pay him the difference.

The appellants will contend upon the appeal that the *Spencer Kellogg* decision of this court is controlling here; that it matters not that here the employer was not the owner and operator of the vessel or the carrier of the workmen. And the appellants will contend further that the absence of actionable wrong on the part of the employer which would give an injured employee a cause of action against the employer for damages under the maritime law is not determinative of the questions here involved; that the right of the employer to immunity under the principles of the maritime law is a valuable right which courts of admiralty will recognize and enforce, and which the state is bound to recognize and respect, equally as would be the right of the employee, in a proper case, to recover from his employer damages for the injury sustained.

2. As to the suggestion in the appellee's statement that "no substantial Federal question is presented": First, If a Federal question is in truth presented, assuredly it is a substantial one, since it goes to the foundation of the

judgment appealed from. If resolved against the appellees, the judgment must fall. Second. That a Federal question is here involved is not questioned in the appellee's statement. The court below has certified

> "A question under the Federal Constitution was presented and necessarily passed upon by this court. It relates to the exclusive jurisdiction of the Federal courts over admiralty cases. The claimant was injured by the explosion of a passenger steamer on the East River, New York. This court held that the workmen's compensation law of the state applied, and that the Federal courts had not exclusive jurisdiction to afford relief."

It is submitted that the existence of a substantial Federal question is apparent from the statement of the nature of the case contained in the appellants' statement as to jurisdiction. The subject of the case being bodily injury suffered by one being transported by vessel, through the sinking of the vessel in the course of the voyage, it is difficult to conceive a subject more clearly and completely falling within admiralty and maritime jurisdiction. And yet the court below has applied to it a local statute which purports and attempts to provide, as a substitute for the rights and remedies of the parties under the maritime law, a rule and measure of liability, as well as a remedy, wholly foreign and repugnant to the rules and principles of the maritime law applicable to such a case.

3. As to the suggestion in the appellee's statement, that "the validity of the state statute as applied in this case is established by principles expressed by this honorable court in cases heretofore decided", it is not thought necessary or appropriate at this time to discuss at length the decisions of this court therein enumerated. In none of them was involved the subject of injuries suffered by a passenger in transportation.

Strangely enough, among the cases cited by the said appellee is *State Industrial Commission* v. *Nordenholt Corp.*, 259 U. S. 263, a decision which these appellants claim supports their contention here, in that this court there held that the controlling consideration is the place where the injury was suffered and not the nature of the work which the injured employee is engaged to perform. In that case, the employee was engaged in maritime work—the unloading of a vessel—but since the injury occurred on the dock, an extension of the land, this court held the state compensation statute applicable. The appellants will contend upon this appeal that the reasoning of that case, applied here, leads to the reversal of the judgment appealed from.

It is, of course, true that the bricklaying work that Heaney expected to do when he reached Rikers Island was a matter of local concern. That work, considered alone, had no relation to commerce or navigation. (The same was true of the factory work of some of the men injured and killed in the sinking of the boat "Linseed King", which was the subject of the controversy involved in *Spencer Kellogg & Sons, Inc.*, v. *Hicks*, 285 U. S. 502.) But, in the case at bar, against the contention of these appellants before the Industrial Board and in the courts below, it has been found, and now is finally determined and established, that Heaney's employment did not begin or end on Rikers Island; but on the contrary, that it began when he set foot on the vessel. Likewise, it has been finally determined that Heaney's injury not only occurred in the course of his employment but arose out of that employment. All of which of necessity means that Heaney was employed not alone to lay brick on Rikers Island but also to make a voyage by vessel across the East River, thereby incurring the risks incident to and inseparable from an undertaking of that character. And it was precisely from this maritime risk that Heaney's injury arose, which was likewise maritime. So that this portion of Heaney's employment was distinctly and typically maritime in character. The fact that he was on the

boat as a voyager, rather than as a seaman, a longshoreman, or a repairman, does not alter the maritime nature of his undertaking, so far as the making of the voyage is concerned. The fact that his principal work was on land laying brick did not insulate him from the maritime risks and dangers incident to the making of a voyage across the East River—the very risk from which his injury arose and which made that portion of his employment maritime in its nature. If at first sight there appear to be incongruity in the proposition that this part of Heaney's employment was maritime, these appellants are not responsible for the apparent incongruity. The conclusions indicated have been adopted against the consistent and continued resistance of these appellants. Now that they are finally resolved, they are, of course, binding not alone upon the appellants but also upon all the parties. It is in the light of these conclusions, which form the basis of the judgment, that it will be reviewed here.

As already indicated, the appellants will contend upon the appeal that the decisions of this court cited in the appellee's statement are not applicable or controlling here, but rather the following:

Spencer Kellogg & Sons, Inc., v. *Hicks*, 285 U. S. 502;
Kenward v. *The Admiral Peoples*, 295 U. S. 649;
Northern Coal & Dock Co. v. *Strand*, 278 U. S. 142;
Southern P. Co. v. *Jensen*, 244 U. S. 205;
Knickerbocker Ice Co. v. *Stewart*, 253 U. S. 149;
Minnie v. *Port Huron Terminal Co.*, 295 U. S. 647;
Employers' Liab. Ass. Corp. v. *Cook*, 281 U. S. 233;
Great Lakes Dredge & Dock Co. v. *Kierejewski*, 261 U. S. 479;
Gonsalves v. *Morse Dry Dock & Repair Co.*, 266 U. S. 171;
Baizley Iron Works v. *Span*, 281 U. S. 222;

Nogueira v. *R. R. Co.*, 281 U. S. 128;
Messel v. *Foundation Co.*, 274 U. S. 427;
Robins Dry Dock & Repair Co. v. *Dahl*, 266 U. S. 449;
Chelentis v. *Luckenbach S. S. Co.*, 247 U. S. 372;
Butler v. *S. S. Co.*, 130 U. S. 527;
State Industrial Com. v. *Nordenholt Corp.*, 259 U. S. 263;
Leary v. *U. S.*, 81 U. S. 607, 610;
Reed v. *U. S.*, 78 U. S. 591;
The Spokane, 294 Fed. Rep. 242 (cert. denied, 264 U. S. 583).

Respectfully submitted,

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